IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7022 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANIDA (VACHARA) JUTE SEVA SAHAKARI MANDALI LTD

Versus

MANIBHAI PUNJABHAI PATEL

Appearance:

MR DM THAKKAR for Petitioner

MR AK CLERK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision:30.6.2000

CAV JUDGEMENT

Rule. Service of rule is waived by learned advocate advocate Mr. Clerk appearing for the respondent workman. On the facts and in the circumstances of the case, the matter is taken up for final hearing today itself.

In this petition, the petitioner has challenged the impugned award dated 4.3.1997 passed by the Industrial Tribunal, Rajkot in Complaint ITR No.18 of 1986 whereby the petitioner has been directed to reinstate the respondent workman with continuity of service with full back wages for intervening period. Brief facts leading to the filing of this petition, in short, are that the respondent was working with the petitioner from 1.1.1975 and his last salary was Rs. 450.00. The services of the respondent was terminated by the petitioner on the basis of the charge of dishonesty and misappropriation and the said order of termination was challenged by the respondent by filing complaint under section 33A of the ID Act being complaint NO. 18 of 1986. Before the tribunal, the respondent has filed the statement of claim and the written statement thereto was filed by the petitioner vide Exh. 9 and the respondent has filed affidavit vide Exh. 4 before the tribunal. The respondent was examined vide Exh. 18 and the petitioner has examined one Lalxmanbhai Bachubhai vide Exh. 26 and, thereafter, the tribunal has examined the merits of the matter and has come to the conclusion that the services of the respondent workman was wrongly terminated by the petitioner without following the procedure prescribed under the law. As regards the charge of misappropriation and dishonesty, the tribunal has observed that no departmental inquiry was initiated against the respondent and the tribunal has considered that even if the impugned order of termination is considered as an order of termination simpliciter, the provisions of section 25F of the ID Act have not been followed and there was no evidence of his gainful employment elsewhere during the intervening period. The tribunal, in view of these observations based on the evidence on record, has, ultimately, directed the petitioner to reinstate the respondent in service with continuity of service and with full back wages for the intervening period.

Learned advocate Mr. Thakkar appearing for the petitioner has submitted before this court that the document at annexure "A" to this petition, page 7 contains details of dishonesty and misappropriation and if the same are perused, there was admission made by the respondent workman that the amount of Rs. 5794.00 has been utilized by the respondent for personal expenses and he has agreed to pay back the said amount to the petitioner. He has submitted that the respondent has admitted before the Managing Committee that he has misappropriated the amount and the amount will be paid to

the petitioner back and, therefore, he has submitted that there was no necessity to initiate inquiry against the respondent workman and the Tribunal ought not to have interfered with the impugned order of termination. He has submitted that the service of the respondent was not terminated though the resolution was passed by the petitioner to terminate the respondent's services but such resolution was not communicated to the respondent and has not at all been served to the respondent. He has submitted that the said resolution has been passed by the petitioner on the basis of loss of confidence in view of the respondent's conduct and, therefore, there was no any requirement to initiate the departmental inquiry against the respondent and there is also no need to comply with the provisions of section 25F of the ID Act and, the tribunal should, therefore, not have passed the impugned order of reinstatement of the respondent workman. He has drawn attention of this court to page 12 and 13 of the paper book where the respondent has admitted that the shortage of Rs. ssss800 will be paid by the respondent workman within two weeks. He has, therefore, submitted that the tribunal has committed gross error in law and facts in directing the petitioner to reinstate the respondent workman.

On the other hand, learned advocate Mr. Clerk appearing for the respondent workman has pointed out that the services of the respondent workman has been terminated on the ground that the goods have been sold by the respondent and the amount realized therefrom has been utilized for the personal use. He has submitted that even if it is assumed while relying that the services were terminated on the ground of misconduct by way of penalty, but prior thereto, no departmental inquiry was held against the respondent and the provisions of section 25F have also not been followed and, therefore, the impugned order of termination is ab initio void. He has, therefore, submitted that the tribunal has rightly passed the order of reinstatement of the respondent in service with full back wages for the intervening period. He has also submitted that even in case of loss of confidence, it would amount to stigma and in such case also, it is necessary that regular departmental inquiry is initiated against the delinquent He has further submitted that as regards the fact relating to the respondent that he has stopped to attend the work, the society has not written any letter to the respondent for intimating him to attend the work nor the society has conducted any inquiry against him for his not reporting for duty and no permission was obtained from the industrial tribunal and, therefore, the award passed by the tribunal is just and

proper and the same cannot be interfered with by this court while exercising the powers under Article 226 and/or 227 of the Constitution of India.

I have heard the learned advocates for the parties. I have also perused the impugned award. Admittedly, at the time of termination of services of the respondent workman, the respondent workman had completed ten years of service. The petitioner has passed resolution to terminate the service of the respondent but copy thereof was not communicated to the respondent but the resultof such resolution was that the respondent was rendered unemployed. It is also undisputed that the charge of the post on which he was working was taken over from him by the petitioner. He has submitted that the explanation was given by the respondent that the amount which was found to be shortage was already repaid to the petitioner society and such deficit has occurred in view of the fact hat the members of the managing committee were in habit of taking goods without making payment and, therefore, such shortage had been occurring which was ultimately paid by the respondent and the respondent has not admitted that he has committed an act of dishonesty and/or misappropriation as alleged by learned advocate Mr. Thakkar.

I have considered annexure "A" to the petition which is at page 7 and 8 and upon perusal thereof, it appears that he has not admitted that he has committed an act of misappropriation and dishonesty as alleged but he has admitted only fact that the said amount has been utilized for personal expenses and, therefore, the same shall have to be paid back to the petitioner society but in no way the respondent has admitted the misconduct as alleged. Similarly, on page 12 and 13 also, the respondent has not admitted the misconduct of dishonesty and misappropriation as alleged. The tribunal has considered that if the respondent has himself stopped to attend the work at his own volition, then, in such circumstances, it is the duty of the society to inform him by issuing some notice calling him on duty but no such notice was given by the petitioner society. Not only that but for not reporting for duty, no departmental inquiry has been initiated against the respondent and no notice was issued to the respondent workman for such alleged action on the part of the respondent workman. Therefore, the fact remain that the petitioner society has passed the resolution which as been admitted by the petitioner in the written statement and, therefore, on the basis of the said resolution, services of the respondent has been terminated by the society but the

same was not communicated to the workman. But another fact has been admitted by the petitioner that on 31.7.1986, charge was taken over from the respondent and there was signature of the respondent for handing over the charge of the post which the respondent was holding and, therefore, considering the admission and the documents on record, the fact is proved that the services of the respondent has been terminated on the basis of the said resolution in view of the alleged misconduct of misappropriation and dishonesty for which no departmental inquiry was held against him and before the tribunal, the respondent has denied the allegation of dishonesty and misappropriation and in written statement, it was the specific case of the petitioner that on 11.1.1986 and 31.1.1986, an amount of Rs.5794.00 and3593.25 has been misappropriated by the respondent workman and, therefore, his service was terminated by passing the resolution. Said resolution was produced on record at Exh. 15 before the tribunal. The tribunal has, considering all these aspects of the matter, has observed that for such misconduct of dishonesty and misappropriation, no departmental inquiry was initiated and even if it is believed to be termination simpliciter, then also, provisions of sec. 25F have not been followed. In such circumstances, the tribunal was right in passing the impugned award of reinstatement in service while setting aside the impugned order of termination.

In such circumstances, the apex court has taken the view that the order of discharge passed by the management without conducting disciplinary action is invalid in case of MCD versus Pravin K. Jain and others reported in 1998 AIR SCW 4012. In said decision, the apex court has further observed that, if it was discharge simpliciter, as pleaded by the appellant corporation, then, it was violative of sec.25F of the ID Act for non compliance thereof. It was further observed that as such stand was taken, it is obvious that the termination order based on misconduct is not the result of any departmental inquiry against the first respondent. Consequently, the impugned order of termination would fail even on that ground and if it is discharge simpliciter, then also, it is violative of sec.25F of the ID Act and if it is believed to be an order by way of penalty, then, it would fail on merits as it has not been passed after following the procedure of departmental inquiry. Therefore, in view of these observations made by the apex court and the principles laid down in the said decision of MCD (supra), the tribunal has rightly passed the impugned award of reinstatement of the workman.

In case of Dipti Prakash Banerjee versus Satyendra Nath Boze, National Centre for Basic Sciences reported in 1999 SCC Lab. and Service page 596 and also in case of VP Ahuja versus State of Punjab and others reported in 2000 AIR SCW 792 and also in case of Naran SIngh Pal versus Unionof India and others reported in 2000 AIR SCW 1141, the question of punitive or simpliciter termination based on stigma has been examined by the apex court and relying upon the observations made in case of Gujarat Steel Tubes Ltd. versus Gujarat Steel Tubes Ltd. Mazdoor Sabha reported in AIR 1980 SC 1896, the apex court has observed that the masters and the servants cannot be permitted to play hide and seek with the law of dismissals and plain and proper criteria are not to be misdirected by terminological cover ups or by psychic process but must be grounded on the substantive reasons for the order whether disclosed or undisclosed. The Court will find out from the other proceedings or documents connected with the formal order of termination. If, thus scrutinized, the order has a punitive flavour and it is dismissal. If falls sort of these tests, it cannot be called a punishment.

Therefore, considering the observations of the apex court and also considering the reasons given by the Tribunal while adjudicating the complaint and also considering the oral and documentary evidence led before the tribunal, I am of the opinion that the tribunal has not committed any error while passing the said award. Before the tribunal, the respondent workman has proved that he has remained unemployed; that he has not been gainfully employed during the intervening period. The petitioner has not produced any evidence to the contrary. The petitioner has not been able to prove before the labour court that the respondent has been gainfully employed during the intervening period. The tribunal was, therefore, right in passing the award of reinstatement of the respondent workman with full back wages for the intervening period. Learned advocate Mr. Thakkar for the petitioner has not been able to point out any infirmity and/or jurisdictional error committed by the tribunal while passing the impugned award of reinstatement which would warrant interference of this court while exercising the powers under Article 226 and/or 227 of the Constitution of India. As per the settled legal position, this court cannot reappreciate the evidence which was led before the tribunal. In view of these circumstances, this petition is required to be dismissed. Same is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

Since this court has dismissed the petition filed by the present petitioner, in the interest of justice, the petitioner is directed to implement the impugned award passed by the tribunal on 4.3.1997 Complaint NO. 18 of 1986 within six weeks from the date of receipt of certified copy of this order.

30.6.2000. (H.K.Rathod,J.)

Vyas